RECENT AMERICAN DECISIONS.

Supreme Court of the United States.

THE CONGRESS AND EMPIRE SPRING CO. *v.* EDGAR.

Animals *ferœ naturæ*, as a class, are known to be mischievous; and whoever keeps such an animal in places of public resort is liable for injuries committed by it to one who is not himself guilty of negligence and is otherwise without fault.

Whoever keeps a dangerous animal, with knowledge of its dangerous propensities, is liable to one injured thereby, without proof of any negligence or default in the securing or taking care of the animal. The gist of the action in such case is the keeping of the animal after knowledge of its mischievous propensities.

The defendant in error was attacked and injured by a buck while in a park owned by the plaintiffs in error, and into which the public were invited and freely admitted. The buck, with other deer, was at large in the park; there was no evidence that the buck had attacked others, but the plaintiffs in error had a notice posted in the park to "Beware of the buck;" there was expert evidence that bucks were dangerous in the fall of the year, at which season the injury was received: *Held*, that the plaintiffs in error were liable.

It is not competent for the Circuit Court to order a peremptory nonsuit in any case; but the defendant, at the close of the plaintiff's case, may move the court to instruct the jury that the evidence introduced by the plaintiff is not sufficient to maintain the action, and to direct a verdict for the defendant. In considering the motion the court proceeds upon the ground that all the facts stated by the plaintiff's witnesses are true, and the motion will be denied, unless the court is of the opinion, that, in view of the whole evidence, and of every inference the law allows to to be drawn from it, the plaintiff has not made out a case which would warrant the jury to find a verdict in his favor.

It seems that the opinion of one qualified to speak upon the point of inquiry, as to the habits of animals *ferœ naturæ*, is admissible as expert testimony; and if not admissible as such it is admissible as matter of common knowledge.

In examining the charge of a court for the purpose of ascertaining its correctness in point of law, the whole scope and bearing of it must be taken together. It is wholly inadmissible to take up single and detached passages and to decide upon them, without attending to the context, or without incorporating such qualifications and explanations as naturally flow from other parts of the instructions.

Instructions given by the court are entitled to a reasonable interpretation; and, if the proposition as stated is not erroneous, they are not, as a general rule, to be regarded as incorrect on account of omissions or deficiencies not pointed out by the excepting party. Appellate courts are not inclined to grant a new trial on account of an ambiguity in the charge to the jury, where it appears that the complaining party made no effort at the trial to have the matter explained.

ERROR to the Circuit Court of the United States, for the Northern District of New York.

The facts are stated in the opinion of the court, which was delivered by

CLIFFORD, J.—Animals *ferœ naturæ*, as a class, are known to

be mischievous, and the rule is well settled that whoever undertakes to keep such an animal, in places of public resort, is or may be liable for the consequences to a party suffering injury from the animal, if not the latter is guilty of negligence and is otherwise without fault. Compensation in such a case may be claimed of the owner or keeper for the injury, and it is an established rule of pleading that it is not necessary to aver negligence in the owner or keeper, as the burden is upon the defendant to disprove that implied imputation. Cases have often arisen where no such averment was contained in the declaration, and the uniform ruling has been that the omission constitutes no valid objection to the right of recovery: *May* v. *Burdett*, 9 Q. B. 101. Negligence was not alleged in that case. Trial was had, and the verdict being for the plaintiff, the defendant moved in arrest of judgment that the declaration was bad for not alleging negligence or some default of the defendant in not properly or securely keeping the animal. Attempt was made by very able counsel to support the motion, upon the ground, that even if the declaration was true, still the injury might have been occasioned entirely by the carelessness and want of caution on the part of the plaintiff; but Lord DENMAN and his associates overruled the motion in arrest, and decided that whoever keeps an animal accustomed to attack and injure mankind, with knowledge that it is so accustomed, is *prima facie* liable in an action on the case at the suit of the person attacked and injured, without any averment of negligence or default in securing or taking care of the animal, and the chief justice added, what it is important to observe, that the *gist* of the action is the *keeping* of the animal after knowledge of its mischievous propensities. Precedents, both ancient and modern, it seems, were cited in the argument and were examined by the court, and the learned chief justice remarked, that with scarcely an exception they merely state the ferocity of the animal and the knowledge of the defendant, without any allegation of negligence or want of care: *Jackson* v. *Smithson*, 15 Mees. & Wels. 565; *Popplewell* v. *Pierce*, 10 Cush. 509.

Injuries of a serious character inflicted by a mischievous deer, which the defendant company kept in their park, were received by the plaintiff at the time and place alleged, for which she claims compensation of the company. By the declaration it appears that the company is the owner and proprietor of the Congress Spring

at Saratoga, in the state of New York, whose waters have become celebrated for their medicinal qualities and the source of great gains and profits to the company. Among other things the plaintiff alleges that the spring had for a long time been kept open and accessible to visitors, the public being invited in various forms to patronize its waters, and that to make it more inviting and attractive the company had opened in connection therewith an extensive park, ornamented with fountains, trees, shrubbery and flowers, through which extensive gravelled walks have been constructed for the use and comfort of those who resort there to use the mineral waters and to enjoy the landscape; that the company, in order further to enhance the attractions of the park, had obtained, and in some degree domesticated, several wild deer, and among them a large and powerful buck, with large horns and of vicious character and habits, which were well known to the defendant company, their officers and agents, and the residents of the village.

Actual knowledge by the company of the mischievous character of the animal is alleged by the plaintiff, and she avers that the vicious animal, on the day named, to wit, the 18th of October 1870, was permitted to run at large in the park, and that she on that day visited the spring to partake of its waters, and that while she was peaceably proceeding along one of the walks in the park she was fiercely attacked by the mischievous buck and greatly injured, bruised and lacerated, as more fully set forth in the declaration.

Service was made and the defendant company appeared and pleaded: 1. The general issue. 2. That the damage and injury suffered by the plaintiff were occasioned by her own fault in neglecting to obey the rules and regulations of the company. On motion of the plaintiff a jury was impanelled and the parties went to trial, which resulted in a verdict and judgment in favor of the plaintiff. Exceptions were filed by the defendant company, and they sued out the pending writ of error.

Since the cause was entered here the defendant company has filed the following assignments of error: 1. That the court, in view of the evidence, should have directed a verdict for the defendant. 2. That the court erred in admitting the questions to the two witnesses called by the plaintiff as experts. 3. That the court erred in the instructions given to the jury in respect to the question of damages.

Certain animals *feræ naturæ* may doubtless be domesticated to such an extent as to be classed, in respect to the liability of the owner for injuries they commit, with the class known as tame or domestic animals, but inasmuch as they are liable to relapse into their wild habits and to become mischievous, the rule is that if they do so, and the owner becomes notified of their vicious habit, they are included in the same rule as if they had never been domesticated, the *gist* of the action in such a case, as in the case of untamed animals, being not merely the negligent keeping of the animal, but the keeping of the same with *knowledge* of the vicious and mischievous propensity of the animal: Whart. on Neg., § 922; *Decker* v. *Gammon*, 44 Me. 327.

Three or more classes of cases exist in which it is held that the owners of animals are liable for injuries done by the same to the persons or property of others, the required allegations and proofs varying in each case: 2 Black. Com. 390, Cooley's ed.

Owners of wild beasts, or beasts that are in their nature vicious, are liable under all, or most all, circumstances for injuries done by them; and in actions for injuries by such beasts it is not necessary to allege that the owner knew them to be mischievous, for he is presumed to have such knowledge; from which it follows that he is guilty of negligence in permitting the same to be at large.

Though the owner have no particular notice that the animal ever did any such mischief before, yet if the animal be of the class that is *feræ naturæ*, the owner is liable to an action of damage if it get loose and do harm: 1 Hale's P. C. 430; *Worth* v. *Gilling*, Law Rep. 2 C. P. 3.

Owners are liable for the hurt done by the animal, even without notice of the propensity, if the animal is naturally mischievous, but if it is of a tame nature there must be notice of the vicious habit: *Mason* v. *Keeling*, 12 Mod. 332; *Rex* v. *Huggins*, 2 Ld. Raym. 1583.

Damage may be done by a domestic animal kept for use or convenience, but the rule is that the owner is not liable to an action on the ground of negligence without proof that he knew that the animal was accustomed to do mischief: *Vrooman* v. *Lawyer*, 13 Johns. 339; *Buxendin* v. *Sharp*, 2 Salk. 662; *Cockerham* v. *Nixon*, 11 Ired. 269.

Domestic animals, such as oxen or horses, may injure the person or property of another, but courts of justice invariably hold, that

if they are rightfully in the place where the injury is inflicted, the owner of the animal is not liable for such an injury unless he knew that the animal was accustomed to be vicious; and in suits for such injuries such knowledge must be alleged and proved, as the cause of action arises from the keeping of the animal after the knowledge of its vicious propensities: *May* v. *Burdett*, 9 Q. B. 101; *Jackson* v. *Smithson*, 15 Mees. & Wels. 565; *Van Leuven* v. *Lyke*, 1 N. Y. 515; *Card* v. *Case*, 5 C. B. 632; *Hudson* v. *Roberts*, 6 Exch. 699; *Dearth* v. *Baker*, 22 Wis. 73; *Cox* v. *Burbridge*, 13 C. B. N. S. 437.

It appears by the bill of exceptions that the plaintiff, on the morning of the day of the injury, entered the park belonging to the defendant company; that after drinking of the water of the spring she walked through the grounds, and that she met the mischievous deer; that he attacked her, goring and striking her with his head and horns, whereby she was thrown down and greatly injured, and put to great suffering and expense, as more fully set forth in her testimony. On her cross-examination she testified that she had been in the habit of visiting the park to enjoy the water and the pleasure of the walk; that she had noticed the deer at an earlier period, and had often seen them running about on the lawn; that she had seen persons playing with them on different occasions, and that she had noticed the signboard posted in the park containing the notice, "Beware of the buck." Another witness, called by the plaintiff, testified that the park contains about eleven acres; that there were nine deer in the park, among which were three bucks, the oldest being four years old; that he first heard that the buck was ugly when the plaintiff was attacked and knocked down; that notices were put up at different places in the park a year or two before, cautioning visitors not to tease or worry the deer, and that he had no knowledge or belief prior to the accident that the buck or any other of the herd would attack any person if they were not disturbed. Expert witnesses were called by the plaintiff, and they gave it as their opinion that the male deer in the fall of the year is a dangerous animal.

Five witnesses were examined in behalf of the plaintiff, but the bill of exceptions does not show that the defendant company gave any evidence in reply, nor is it stated that the whole testimony introduced by the plaintiff is reported. When the evidence was closed, the defendant moved that the action be dismissed, that the

plaintiff be nonsuited, and that the court direct the jury to return a verdict in favor of the defendant.

Discussion of the first two propositions involved in the motion is wholly unnecessary, for two reasons: 1. Because the jurisdiction of the court was beyond doubt, and the record shows that the suit was well brought. 2. Because it is not competent for the circuit court to order a peremptory nonsuit in any case.

Circuit courts cannot grant a nonsuit, but the defendant at the close of the plaintiff's case may move the court to instruct the jury that the evidence introduced by the plaintiff is not sufficient to maintain the action and to direct a verdict for the defendant. In considering the motion, the court proceeds upon the ground, that all the facts stated by the plaintiff's witnesses are true, and the rule is, that the motion will be denied unless the court is of the opinion, that in view of the whole evidence, and of every inference the law allows to be drawn from it, the plaintiff has not made out a case which would warrant the jury to find a verdict in his favor: *Bank* v. *Bank*, 3 Cliff. 206; *Same* v. *Same*, 10 Wall. 655.

Tested by that rule, which is everywhere admitted to be correct, it is clear that the motion of the defendant was properly denied, for several reasons: 1. Because the proof of injury was overwhelming. 2. Because the allegation that the animal was vicious and mischievous was satisfactorily proved. 3. Because the evidence to prove that the defendant company had knowledge of the vicious and mischievous propensity of the animal was properly left to the jury, and it appearing that the Circuit Court overruled the motion for a new trial, the court here cannot disturb the verdict except for error of law. 4. Because the cause of action in the case arises not merely from the keeping of the animal, but from the keeping of the same after knowledge of its vicious and mischievous propensities. 5. Because the evidence is plenary that the plaintiff was rightfully in the place where she was injured, and that the owners of the vicious animal, inasmuch as the evidence tended to show that they had knowledge of its mischievous propensities, are justly held liable for the consequences: *Stiles* v. *Nav. Co.*, 33 L. J. (N. S.) 311; *Oakes* v. *Spalding*, 40 Vt. 351; *Sarch* v. *Blackburn*, 4 C. & P. 300; *Same* v. *Same*, 1 Moo. & Mal. 505; *Besozzi* v. *Harris*, 1 Fost. & Fin. 92.

Whoever keeps an animal accustomed to attack or injure mankind, with the knowledge of its dangerous propensities, says Addi-

son, is *prima facie* liable to an action for damages at the suit of any person attacked or injured by the animal, without proof of any negligence or default in the securing or taking care of the animal, the *gist* of the action being the keeping of the animal after knowledge of its mischievous disposition; Addison on Torts, ed. 1876, 283; *Dickson* v. *McCoy*, 39 N. Y. 401; *Applebee* v. *Percy*, Law Rep. 9 C. P. 650; Bigelow's Leading Cases on Torts 489.

2. Witnesses are not ordinarily allowed to give opinions as to conclusions dependent upon facts not necessarily involved in the controversy, but an exception to that rule is recognised in the case of experts, who are entitled to give their opinions as to conclusions from facts within the range of their specialties, which are too recondite to be properly comprehended and weighed by ordinary reasoners: 1 Wharton's Ev., § 440.

Men who have made questions of skill or science the object of their particular study, says Phillips, are competent to give their opinions in evidence. Such opinions ought in general to be deduced from facts that are not disputed or from facts given in evidence, but the author proceeds to say that they need not be founded upon their own personal knowledge of such facts, but may be founded upon the statement of facts proved in the case. Medical men for example may give their opinions not only as to the state of a patient they may have visited, or as to the cause of the death of a person whose body they have examined, or as to the nature of the instruments which caused the wounds they have examined, but also in cases where they have not themselves seen the patient, and have only heard the symptons and particulars of his state detailed by other witnesses at the trial. Judicial tribunals have in many instances held that medical works are not admissible, but they everywhere hold that men skilled in science, art or particular trades, may give their opinions as witnesses in matters pertaining to their professional calling: 1 Phil. Ev., ed. 1868, 778.

It must appear, of course, that the witness is qualified to speak to the point of inquiry, whether it respects a patented invention, a question in chemistry, insurance, shipping, seamanship, foreign law, or of the habits of animals, whether *ferœ naturæ* or domestic.

On questions of science, skill or trade, or others of like kind, says Greenleaf, persons of skill, sometimes called experts, may not only testify to facts, but are permitted to give their opinions in evidence: 1 Greenl. Ev., § 400; *Buster* v. *Newkirk*, 20 Johns. 75.

Whether a witness is shown to be qualified or not as an expert is a preliminary question to be determined in the first place by the court, and the rule is that if the court admits the testimony then it is for the jury to decide whether any, and if any, what, weight is to be given to the testimony. Cases arise where it is very much a matter of discretion with the court whether to receive or exclude the evidence, but the Appellate Court will not reverse in such a case unless the ruling is manifestly erroneous: *Towboat Co.* v. *Starrs*, 19 P. F. Smith 41; *Page* v. *Parker*, 40 N. H. 59; *Tucker* v. *Railroad*, 118 Mass. 548.

Experts may be examined, says Justice GRIER, to explain the terms of art and the state of the art at any given time. Speaking of controversies between a patentee and an infringer, he says that experts may explain to the court and jury the machines, models or drawings exhibited in the case. They may point out the difference or identity of the mechanical devices involved in their construction, and adds that the maxim "*cuique in sua arte credendum*," permits them to be examined in questions of art or science peculiar to their trade or profession: *Winans* v. *Railroad*, 21 How. 100; *Ogden* v. *Parsons*, 23 Id. 170.

Even if the witnesses are not properly to be regarded as experts, the court is of the opinion that the testimony was properly admitted as a matter of common knowledge.

Well-guarded instructions were given to the jury on the subject, as appears from the transcript. Their attention was directed to the testimony, and they were told that it was for them to determine its weight, which shows that the defendant has no just ground of complaint.

3. Complaint is also made by the defendant that one sentence of the charge of the court in respect to the damages is erroneous. When you have made up your mind, said the judge, as to the amount *really sustained*, you are not to be nice in the award of compensation. It should be liberal.

Exception was taken to that remark, without request for a different instruction, or that it should be qualified or explained in any way. Before that remark was made, the judge cautioned the jury against giving credence to any extravagant statement of the injuries received, and then told them that when they had made up their minds as to the amount—meaning the amount of the injury really sustained—they should not be nice in the award of compensation,

adding, as if to qualify the antecedent caution given in favor of the defendant, that it should be liberal.

In examining the charge of the court, for the purpose of ascertaining its correctness in point of law, the whole scope and bearing of it must be taken together. It is wholly inadmissible to take up single and detached passages and to decide upon them, without attending to the context or without incorporating such qualifications and explanations as naturally flow from other parts of the instructions: *Magniac* v. *Thompson*, 7 Pet. 300.

Instruction given by the court at the trial are entitled to a reasonable interpretation, and, if the proposition as stated is not erroneous, they are not, as a general rule, to be regarded as incorrect on account of omissions or deficiencies not pointed out by the excepting party; *Castle* v. *Bullard*, 23 How. 189.

Appellate courts are not inclined to grant a new trial on account of an ambiguity in the charge to the jury, where it appears that the complaining party made no effort at the trial to have the matter explained: *Locke* v. *United States*, 2 Cliff. 580; *Smith* v. *McNa-Mara*, 4 Lans. 174.

Requests for such a purpose may be made at the close of the charge, to call the attention of the judge to the supposed error, inaccuracy or ambiguity of expression, and where nothing of the kind is done, the judgment will not be reversed, unless the court is of the opinion that the jury were misled or wrongly directed: *Carver* v. *Jackson*, 4 Pet. 81; *White* v. *McLean*, 57 N. Y. 672.

None of the exceptions can be sustained and there is no error in the record.

Judgment affirmed.

The decision in the principal case upon the question of liability for injury done by wild animals, whatever view may be taken of the dictum of the court hereinafter referred to, is clearly correct, for the reason that the evidence tended clearly to show that the owners of the animal, which did the injury, had notice of his mischievous propensities, which, under all the authorities, imposed upon them the obligation of taking proper precautions to prevent his injuring persons rightfully upon the premises, none of which, it seems, were taken in this case. Whether the rule laid down in Hale's Pleas of the Crown 430, pt. 1, c. 33, and approved by the court in the principal case, is also in all respects correct, is perhaps open to more question. With respect to this subject, Lord HALE, quoting as authority 3 Edw. 3, Coron. 311; Stamf. P. C. 17 *a*, there says that "these things seem to be agreeable to law: 1. If the owner have notice of the quality of his beast, and it doth any body hurt, he is chargeable with an action for it.

"2. Though he have no particular

notice that he did any such thing before, yet if he be a beast that is *feræ naturæ*, as a lion, a bear, a wolf, yea, an ape or a monkey, if he get loose and do harm to any person, the owner is liable to an action for the damage; and so I knew it adjudged in *Andrew Baker's Case*, whose child was bit by a monkey that broke his chain and got loose.

"3. And, therefore, in case of such a wild beast, or in case of a bull or cow that doth damage, where the owner knows of it, he must, at his peril, keep him up safe from doing hurt; for though he use diligence to keep him up, if he escape and do harm, the owner is liable to answer damages."

The doctrine of propositions 2 and 3 above quoted, seems to make the owner of beasts *feræ naturæ* liable absolutely as an insurer against all injuries done by such beasts; and the rule is generally stated to be, as stated by Lord HALE, that the owner must keep up such beasts at his peril, though it is believed that in most of the cases where the doctrine has been touched upon, it has been assumed as an existing rule of law, rather than adjudged after argument and consideration of the question upon principle and authority. See Bull. N. P. 77; Ld. Raym. 1583; *Besozzi* v. *Harris*, 1 F. & F. 93.

It is to be observed, before considering this subject further, that even if the above rule is correct, this liability does not properly depend upon the mere classification of the animal as being *feræ naturæ*, to which class would belong rabbits and many other animals having no natural disposition to injure man, but rather upon the natural savage propensities of the animal, as in the case of lions, tigers, &c. See *Earl* v. *Van Alstyne*, 8 Barb. 630. It is also to be observed that in any event the plaintiff complaining of an injury received from such an animal, must not have been guilty of contributory negligence himself. See *Besozzi* v. *Harris*, *supra*.

To return to the question under consideration, the case of *May* v. *Burdett*, 9 Q. B. (N. S.) 101; s. c. Big. Lead. Cases on Torts 478, is usually cited in cases where this subject is considered. This was an action for injuries received by the bite of a monkey, and a verdict for the plaintiff with damages was sustained and judgment rendered thereon, although no negligence was charged in the declaration. The court, in this case, per DENMAN, C. J., were of opinion that the gist of the action is in the keeping of the animal after knowledge of its mischievous propensities, and state that the conclusion to be drawn from an examination of all the authorities appears to be, that a person keeping a mischievous animal, with knowledge of its propensities, is bound to keep it secure at his peril, and that, if it does mischief, negligence is presumed without express averment. See, also, *Wolf* v. *Chalker*, 31 Conn. 130. With reference to the case of *May* v. *Burdett*, Judge COOLEY, in his work on Torts, p. 379, note, says, that "the decision in this case seems to be that the keeper of such an animal, is *prima facie* responsible for the injuries done by it; but it is not decided that he may not meet the case by showing that he observed in respect to it proper care."

In *Laverone* v. *Mangianti*, 41 Cal. 138, the plaintiff was entering defendant's premises on lawful business, and, while ascending the steps to his house, one of the steps, which was loose, slipped from its position, and plaintiff's leg went through the opening, and was seized and bitten by defendant's dog, which was chained under the steps in such a manner that he could not reach one ascending the steps. No negligence was averred in the complaint, and the action was based on the theory that the owner of a dog, which he knows is vicious, is bound, at his peril, so to keep him that no one shall be bitten, unless it be through the culpable negligence of the party who suffers the injury.

RHODES, C. J., in delivering the opinion of the court, said: "It is insisted, on behalf of the defendants, that a person may lawfully keep a ferocious dog—one that is accustomed to bite mankind. That position may be conceded, and it may also be conceded that he has the same right to keep a tiger. The danger to mankind and the injury, if any is suffered, comes from the same source—the ferocity of the animal. In determining the responsibility of the keeper for an injury inflicted by either animal, the only difference I can see between the two cases is, that in case of an injury caused by a dog, the knowledge of the keeper that the dog was ferocious, must be alleged and proven, for all dogs are not ferocious; while in the case of a tiger, such knowledge will be presumed from the nature of the animal. This knowledge, however, established, whether by evidence or by presumption, is the same in substance, and works the same results. When the facts in two or more cases are alike, the law will pronounce similar judgments. It will not be doubted that for an injury inflicted by a tiger, his owner will be responsible, and, in my opinion, there is as little reason to doubt that the owner of a dog, which he knows to be ferocious, is equally liable for a similar injury occasioned by it. In either case, the owner, knowing the vicious propensities and ferocious nature of the animal, keeps it at his own risk, and he should bear the responsibility for any injury inflicted by it upon a person who is free from fault." See, also, *Wolf* v. *Chalker*, *supra*. CROCKETT, J., dissented from the opinion of the court in *Laverone* v. *Mangianti*, holding that the more reasonable rule was announced in *Sarch* v. *Blackburn*, 5 C. & P. 207, to the effect that every one has a right to keep a watch dog for the protection of his premises, and is only responsible for injuries resulting from negligence in the keeping.

With reference to this general subject, Judge COOLEY, in his valuable work on Torts, p. 348, referring to the above quotations from Lord HALE, very reasonably says: "If this doctrine is good law at this day, it must be because the keeping of wild beasts accustomed to bite and worry mankind is unlawful. For, if the keeping of such beasts is not a wrong in itself, then no wrong can come from it until some wrongful circumstance intervenes; in other words, until there is negligence. * * * The keeping of wild animals for many purposes, has come to be recognised as proper and useful; they are exhibited through the country with public license and approval; governments and municipal corporations expend large sums in obtaining and providing for them; and the idea of legal wrong in keeping and exhibiting them is never indulged. It seems, therefore, safe to say that the liability of the owner or keeper for any injury done by them to the person or property of others, must rest on the doctrine of negligence. A very high degree of care is demanded of those who have them in charge, but, if, notwithstanding such care, they are enabled to commit mischief, the case should be referred to the category of accidental injuries, for which a civil action will not lie." See also, *Earl* v. *Van Alstyne*, 8 Barb. 630, per SELDEN, J.; *Scribner* v. *Kelley*, 3 Id. 14; *Lavarone* v. *Mangianti*, *supra*, dissenting opinion of CROCKETT, J.

I have quoted thus largely from that portion of Judge COOLEY'S work treating upon this subject, because it seems more satisfactory than any other discussion that has come to my notice. Perhaps, on grounds of policy, the strict rule that the owner of a wild beast must keep him in at his peril, may be better adapted to promote security of person, but if it be true, as it is believed to be, that the keeping of wild beasts is not *per se* a wrong, it is difficult to avoid the conclusion that there should

be no liability for injuries inflicted by them unless negligence is shown, either as a presumption or by actual proof. Although, hitherto, few cases have arisen upon the question, it is deserving of consideration, when the question does fairly arise, whether the old common-law rule should not in view of the foregoing considerations, be modified to accord with the above views.

MARSHALL D. EWELL.

United States District Court, Southern District of Ohio.

LOUISA C. RUSK, LIBELLANT, *v.* STEAMBOAT CHARLES MORGAN.

The wife of a passenger brought an action *in rem* against the steamboat, to recover damages for the death of her husband, caused by the negligence of the officers of the vessel.

Plea to the jurisdiction. Jurisdiction sustained.

IN admiralty.

This was an action *in rem*, by the widow of Edwin Rusk, against the steamboat Charles Morgan, to recover damages for the death of her husband. The libel alleged that her husband was a passenger upon said boat, from New Orleans to Cincinnati, and that owing to the negligence and carelessness of the master and officers of the boat, in leaving the hatchways open at night, without light and guard, he fell through one of the hatchways into the hold of the vessel and was instantly killed. Prayer for damages. Claimant files a plea to the jurisdiction in the form of exceptions to the libel, on the ground, that in admiralty, as at common law, no action is maintainable for the wrongful death of another, either *in personam* or *in rem*.

P. J. Donham, for exception.

Henry Hooper, for libellant.

The opinion was delivered by

SWING, District Judge.—From an examination of the English authorities, it is very clear, that no right of action existed at common law for the death of a human being. This doctrine is first announced in the case of *Higgins* v. *Butcher*, Yelv. 89, which was an action brought by the husband for the death of his wife. Then came the celebrated case of *Baker* v. *Bolton*, 1 Camp. 493, which was also an action brought by the husband, to recover damages for the death of his wife. These are all the cases we have